

The Gazette of India

EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 428A] NEW DELHI, TUESDAY, OCTOBER 14, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 14th October 1952

No. 19/77/52-Elec.III.—WHEREAS the election of Shri Popatlal Mulshanker Joshi of Brahman Vas, Outside Delhi Gate, Palanpur, as a member of the Legislative Assembly of Bombay from the Deesa-Dhanera constituency of that Assembly has been called in question by two election petitions duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Kanaiyalal Bhabhutbhai Mehta of Gathamam Gate, Palanpur and Shri Kanaiyalal Durllabharam Bhansali of Pipala Sheri, Palanpur (North Gujarat), respectively;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of sections 86 and 87 of the said Act, for the trial of the said petitions, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the Election petition filed by Shri Kanaiyalal Durllabharam Bhansali;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION NO. 77 of 1952.

Exh. No. 60.

Coram:

Shri B. C. Vakil, B.A. (Hons.) LL.B.

Chairman

Shri T. P. Ghogale, B.A. (Hons.) LL.B. }

Shri A. A. Adarkar, B.A., LL.B. }

Members of the Election Tribunal.

In the matter of the Representation of the People Act, 1951

and

Pleaders.

Shri G. P. Vyas. In the matter of the Representation of the People (conduct of Elections and Election Petitions) Rules, 1951

and

In the matter of the Election Petition presented thereunder by Shri Kanaiyalal Durllabharam Bhansali, residing at Pipala Sheri, Palanpur (North Gujarat).

Versus

Pleaders

Shri C. C. Bhatt.

(1) Popatlal Mulshanker Joshi residing at Brahman Vas, outside Delhi Gate, Palanpur (North Gujarat).

(2272)

Pleaders.

- Shri M. R. Barot. (2) Satyendra Kaldas Zaveri, Vakill, c/o Kalidas Jashkaran Zaveri, Vakill Bhatti Pole, Below Bridge, Ahmedamad.
- Shri M. R. Barot. (3) Natverlal Manilal Desai, c/o Manilal Jethram Desai, Vakill Desai Vas, Palanpur (North Gujarat).
- Shri N. S. Kothari. (4) Kaniyalal Bhabhutbhai Mehta, 81-A, Zaveri Bazar, Bombay 2.

This is an election petition filed by Shri Kanaiyalal Durllabhrum Bhansali who was one of the candidates for election for a seat in the Bombay Legislative Assembly from the Deesa-Dhanera Constituency in the Banaskantha District to get the election of the successful candidate Shri Popatlal Mulshanker Joshi, respondent No. 1 herein, declared void and to get himself declared duly elected or to get the election declared wholly void. Respondents Nos. 2, 3 and 4 were the other persons who had besides the petitioner and respondent No. 1 filed nomination papers. The nomination paper of respondent No. 4 was rejected by the Returning Officer at the time of the scrutiny and the third respondent withdrew his nomination after the scrutiny. At the election respondent No. 1 got the highest number of votes, that is, 9565, while the petitioner stood next getting 8174. The petitioner then filed this petition, dated 29th March 1952, which was received by the Election Commission on 31st March 1952.

2. All the respondents were duly served and at the hearing all were represented by pleaders.

3 The petitioner had filed an application Ex. 10 dated 30th August 1952 to amend particulars. This Tribunal by its order dated the 16th September 1952 had allowed some clerical errors only to be amended and dismissed the rest of the application for the reasons stated in the order. This petition was fixed for hearing at Palanpur on 6th October 1952.

4. When the petition was called out on 6th October 1952, Shri C. C. Bhatt, for respondent No. 1, Shri Popatlal Joshi presented application Ex. 56 praying that his objection taken in the written statement that the petition was incompetent for non-compliance with the provisions of Section 83(2) of the Representation of the People Act should be tried first as a preliminary point. After hearing all the parties present, the Tribunal decided that it was necessary to dispose of the preliminary point first and also to decide on what matters it was permissible to the petitioner to adduce evidence before the hearing of the evidence was actually commenced. The following points had, therefore, to be determined by the Tribunal first:—

- (1) Is the petition incompetent for non-compliance of the provisions of Section 83 of the Representation of the People Act?
- (2) With regard to which allegations in the petition, it is permissible to the petitioner to lead evidence?

The findings of the Tribunal are:—

- (1) Yes.
- (2) Nil.

5. *Reasons:* The petitioner seeks to get the election set aside mainly on the ground of the alleged corrupt and illegal practices, bribery and undue influence. Shri Vyas, the petitioner's learned pleader conceded that the first two paragraphs referred to general averments about the election in question and paragraphs 14, 15, 16, 17, 18 and 19 were a recapitulation and legal effect of the allegations previously made and that the last para. 20 pertained to the relief sought. Shri Vyas further conceded that he could not lead any evidence with regard to allegations about false return, impersonation and bribery made in paragraphs 6, 7 and 13 of the petition in view of the orders passed on Ex. 19 he could not lead any. He also conceded that allegations in para. 9 did not constitute any illegal or corrupt practice and that

the petition would not succeed on the basis of the averments made in that paragraph. According to Shri Vyas even after the order passed on Ex. 19, the petitioner would be entitled to lead evidence with regard to averments made in paragraphs 3, 4, 5, 8, 10, 11 and 12 and he said that the petitioner was ready with such evidence. The allegations in all the above paragraphs except those in paragraph 8 pertain to corrupt and illegal practices.

6. The allegations in para. 8 of the petition are that at the Polling Station at Bhachalva some two specified supporters of respondent No. 1 climbed to the roof of the polling booth and from there held out a board representing a cock which was the symbol of respondent No. 1 notwithstanding the warning of the presiding officer. The learned pleaders for the petitioner as well as respondent No. 1 admitted that the ground is covered by Section 100(2)(c) of the Representation of the People Act and that the election of the returned candidate can be declared void on this ground only if the result of the election is materially affected by the non-compliance relied upon. In the present case there is no averment in the petition that the alleged display of the board containing respondent No. 1's symbol has materially affected the election. The admitted difference between votes polled by respondent No. 1 on the one hand and the petitioner on the other is 1391. The total number of persons who would have been entitled to vote at the election at the Bhachalva polling station was 781 as shown by Ex. 59. According to the first respondent only about 425 out of them exercised their right of voting. The petitioner who was examined at Ex. 57 stated that he did not know what was the total number of voters entitled to vote at that polling station and how many of them actually exercised their right of voting. He was unable to say whether he could have on the whole got greater number of votes than respondent No. 1 even if all the persons who were entitled to vote had voted for him. Respondent No. 1 had polled 1391 votes more than the petitioner and when the total number of voters for the Bhachalva polling station was 781, it is clear that even if all the persons who exercised their right of voting had voted for the petitioner, the result of the election would not have been materially affected. The petitioner has advisedly not averred that the result of the election was materially affected by the incident alleged in para. 8 of the petition. This ground, therefore, does not survive for the petitioner and the only grounds that survive are those which are covered up by the allegations made in paragraphs 3, 4, 5, 10, 11 and 12 of the petition, which refer to the alleged corrupt and illegal practices said to have been employed by respondent No. 1.

7. It is the contention of Shri Bhatt, the learned pleader for respondent No. 1 that the petition is not maintainable for petitioner's non-compliance of the mandatory provisions of Section 83(2) of the Representation of the People Act. Section 83(2) provides that the petition shall be accompanied by a list signed and verified as provided in the manner laid down in the Code of Civil procedure 1908 setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt practice, and the date and place of the commission of such practice. Shri Bhatt urged that the petitioner filed no list accompanying the petition but only filed Exhibits A, B and C as parts of the petition itself and even taken by themselves they conveyed nothing intelligible. Shri Bhatt contended that the particulars were under the Representation of the People Act required to be filed in a list accompanying the petition and the failure to file such a list should result in the dismissal of the petition. Shri Bhatt further contended that even if the petition could be referred to for determining whether there were enough particulars of corrupt and illegal practices to entitle the petitioner to a hearing, those particulars mentioned in the petition read with the Exs. A, B and C referred to in the petition were very vague and indefinite and not such particulars as were contemplated by Section 83(2) and the petitioner cannot be permitted to make out any case of corrupt or illegal practice by adducing any evidence. Shri Vyas, the learned pleader for the petitioner, conceded that there was no separate list accompanying the petition and that Exhibits A, B and C were parts of the petition itself but he contended that where the particulars should be detailed, whether in the petition or in a list accompanying the petition was a mere matter of form, the non-compliance with which could not result in the rejection of the petition. He contended that the whole object of supplying particulars was to give reasonable notice to the other side of the petitioner's case and if the petitioner could show that he had given such reasonable notice, he had substantially complied with the provisions of Section 83(2) and the petition should not be dismissed under Section 90(4) of the Representation of the People Act. Shri Vyas then dealt with the averments made in para. 3, 4, 5, 10, 11 and 12 to show that he had given as full particulars as possible.

8. We cannot accept the contention of Shri Vyas that the giving of particulars in a list accompanying the petition is a mere matter of form. The provision has been framed with a view of give the earliest possible notice of the charges relied upon by the petitioner to the respondent and to indicate the place where the respondent should look for them. The petitioner is in his petition is required to make statements of material facts in support of his application. The Act, however, provides that so far as the particulars of any corrupt or illegal practice are concerned they should be specified in a list accompanying the petition and they should be of the nature specified in Section 83(2). The provision necessitating the particulars to be filed in the list accompanying the petition is a new and special one embodied in the Representation of the People Act and is mandatory in its nature. The Election Rule of 1920 under which the Attock case I.H.I.E.P. was decided were different and they did not contain any provision with regard to the filing of the list giving particulars of the alleged corrupt and illegal practices. Prior to the Representation of the People Act there was no Act with regard to election petitions and their trial. It was for the first time that provision was made in the Act as to what the petition shall contain and how the particulars of corrupt and illegal practices shall be given. The decisions under Election Rules of 1920, therefore, afford no useful guide for the construction of Section 83(2) of the Representation of the People Act. The words "shall be accompanied" in Section 83(2) indicate that the filing of a list accompanying the petition containing particulars of corrupt and illegal practices is obligatory on the petitioner who relies on any such practice for getting the election set aside. There is no provision to file a first list but Section 83(3) provides for the particulars included in the list to be amended. What the Act permits is not the amendment of the list but the amendment of the particulars and that too of the particulars included in the list. This also indicates that the framers of the Act considered it absolutely mandatory that the particulars be included in the list accompanying the petition and not in the petition itself. If the intention was that filing of the list was a mere matter of form and the particulars could be stated in the petition Section 83(3) would not have restricted the amendment of the particulars to the particulars stated in the list only. This very Tribunal had occasion to construe Section 83 of the Representation of the People Act in the matter of Election Petition No. 83 of 1952, Purshottamdas Ranchhoddas *vs.* Shantilal Girdharilal, where the petitioner had failed to file a duly verified list along with the petition. This Tribunal held the provisions of Section 83(2) and the filing of duly verified list of particulars accompanying the petition to be mandatory and dismissed that petition. This petition is admittedly not accompanied by any list at all and is liable to be dismissed under Section 90(4) of the Act.

9. Even the contention of the petitioner that the particulars of corrupt and illegal practices stated by him in the petition satisfy the requirements of Section 83 of the Representation of the People Act is not correct. The petitioner has filed Exs. A, B and C with the petition. Paragraph 3 has reference to Ex. A, paragraph 6 refers to Ex. B while paragraph 11 refers to Ex. C. Paragraph 6 which has reference to Ex. B does not now remain to be considered in view of what has been stated above. The contention of Shri Vyas is that paragraph 3 of the petition read with Ex. A, paragraph 11 of the petition read along with Ex. C and paragraphs 4, 5, 10 and 12 of the petition mention sufficient particulars so as to give reasonable notice of the petitioner's case to respondent No. 1 Shri Bhatt had contended that Exs. A and C in themselves conveyed nothing intelligible and Shri Vyas conceded this position. He, however, urged that these two exhibits had to be read along with paragraphs 3 and 11 respectively. The petitioner had even verified Exs. A and C but he has deliberately not contended that they are lists as required by Section 83(2) as they in themselves do not fulfil the requirement of Section 83(2) of the Act and therefore Shri Vyas is driven to contend that Exs. A and C should be read with paragraphs 3 and 11 respectively as integral parts of the petition itself. Even doing so the Tribunal does not find that the petitioner has satisfied the requirements of Section 83(2) of the Representation of the People Act.

10. The Tribunal now proceeds to consider the different paragraphs of the petition one by one. The allegations in para. 3 of the petition aim at bringing the case within the purview of the major corrupt practice mentioned in Section 123(2) (a) (i) (ii). Various kinds of threats detailed in clauses (a) to (h) were alleged to have been given to the voters in a large number of villages. The names of the villages where such threats were given and the names of the persons giving the threats were mentioned in Ex. A. It is not possible to find out from paragraph 3 of the petition read with Ex. A as to which persons gave which particular threats and at which village. Section 83(2) requires that the date and place of the Commission of each of the alleged corrupt or illegal practice should be specified in the list. Paragraph 3 of the petition even when read with Ex. A does not show on what date any of the threat was given. It is not the case of the petitioner that at

each of the specified village all the threats detailed in clauses (a) to (h) were given as each of the clauses are joined by and/or. Shri Vyas conceded that all the clauses (a) to (h) would not apply in case of all the persons mentioned in Ex. A as clause (e) would apply to Muslim voters only who are alleged to have been threatened to be deported to Pakistan. Again, even the name of a single voter who is alleged to have been so threatened is not mentioned. It was contended that it was necessary only to mention the name of the person giving the threat and not to specify the name of the person threatened. The Tribunal does not accept that contention. The allegation about the alleged threat should be specified with reasonable particularity even with respect to the person threatened to indicate to the respondent what case he had to meet. The petitioner himself was conscious that he had not given the particulars as required by the Act and mentions at the end of paragraph 3 of the petition "The said particulars are not complete in as much as within the short time at the disposal of the Petitioner he has not been able to obtain full details." Even in paragraph 19 of the petition he has made a similar admission.

11. According to Shri Vyas, Paragraph 4 does not refer to any separate or distinct corrupt practice but is only an extension of the allegations made in paragraph 3. The averments in para. 4 relate to the alleged conduct of respondent No. 1 subsequent to the election and is irrelevant as a statement of particulars.

12. The allegations in paragraph 5 of the petition are of a very vague and indefinite character. The object of paragraph 5 of the petition is to allege particulars coming within the purview of Section 123 (2)(a)(ii). Meetings are said to have been held at Sia and other places, at the instance of and/or with the connivance of the first opponent and/or his agents, religious oaths are alleged to have been taken to vote for the first opponent and/or his agents are also alleged to have given food, tea and opium Kasumba to the persons assembled there. At the villages of Sia, Sankad, Runi, Therawada and other villages meetings are said to have been held at public places and places of religious worship, where at the instance of the first opponent and/or his agents oaths were administered to leaders and prominent people in the name of religion, deities and with other religious ceremonies whereby voters were led to believe that they were bound to vote for the first opponent and if they failed to do so they will be visited by divine displeasure and/or will be subject to spiritual censure. No date when any such meeting was held is mentioned. The nature of the place of worship is deliberately kept vague and respondent No. 1 would be unable to know whether these were places of worship for Hindus, Muslims or Jains or any other community. Oaths are alleged to have been administered to leaders and prominent people in the name of religion but not one of such leader or prominent person is mentioned by name. Food, tea and Kasumba have been stated to have been served at some such meetings. This is very indefinite and respondent No. 1 would not get any notice as to at which meeting these articles were served and on what date or at what place. The allegations are kept so vague as to enable the petitioner to adjust his evidence even at the hearing and to make it impossible for respondent No. 1 to meet the case. There is similar vagueness with regard to the leaders of communities who are alleged to have bound themselves by oath to vote for respondent No. 1 and to carry on propaganda for him.

13. Paragraph 10 pertains to the alleged propaganda carried on by respondent No. 1 and/or his agents and by other persons with their connivance that the petitioner was not a Congress candidate and that the persons desiring to vote for Congress need not, therefore, vote for the petitioner. It is alleged that the said propaganda was false to the knowledge of the first respondent and his agents and such other persons who are alleged to have carried on the propaganda. No date on which the alleged propaganda was carried on nor the places where it was carried on are specified in paragraph 10. The phrase "agents and other persons" is vague. Paragraph 10 also does not comply with the requirements of Section 83(2).

14. The object of paragraph 11 of the petition is to allege a major corrupt practice falling within the purview of Section 123(8) of the Representation of the People Act. It is sought to be alleged that the first respondent obtained or procured either by himself or through other persons with his connivance the assistance of the Government servants specified in Ex. C for the furtherance of his prospects at the election. By Ex. 19 the petitioner wanted to amend these particulars. Had this paragraph contained some particulars and only amplification was desired the Tribunal would have considered whether the amendment should be permitted. The Tribunal in its order below Ex. 19 stated that what assistance, in what particulars

was given and on what dates was not stated. The same argument applies to paragraph 11 read along with Ex. C and the averments. In the opinion of the Tribunal, are vague and are not such as would indicate to the first respondent the case he has to meet.

15. The averments in paragraph 12 of the petition are entirely vague. Letters are alleged to have been sent to the leaders at various places and oral messages are said to have been transmitted stating that according to the resolutions passed by the respective communities, the voters were bound to vote for the first respondent and if they did not vote accordingly the caste would take action against them. By this paragraph corrupt practices falling within the purview of Section 123(2)(a)(i) and Section 124(5) were sought to be alleged. The names of the leaders, the name of the community, the names of the places, the persons communicating the oral message and the communities by which the alleged resolutions were passed and the date when they were passed are left entirely vague. The allegations are such as would enable the petitioner to produce any witness at any time. Shri Vyas was conscious of this infirmity and he, therefore, sought to argue that paragraph 12 did not allege any distinct corrupt practice but was a mere extension and a part of para. 2. The Tribunal does not accept this contention and there is nothing in the petition to show that paragraph 12 is connected with paragraph 3 of the petition. As it is we have already held that para. 3 itself is not in conformity with Section 83 of the Act.

16. The result, therefore, is that the petition is not accompanied by a list of corrupt or illegal practice as required by Section 83(2) and the petition is liable to be dismissed under Section 90(4) of the Representation of the People Act. Even if the averments in the petition itself as amplified by Exs. A, B and C were to be considered they too do not satisfy the requirements of Section 83(2).

17. It is true that under Section 90(4) of the Representation of the People Act the Tribunal may dismiss the election petition which does not comply with the provisions of Section 83. This implies that the Tribunal has power not to dismiss a petition in case the provisions of Section 83 have been substantially complied with. However, in this particular case in the opinion of the Tribunal the petitioner has failed to comply with a mandatory provision and has not even substantially complied with the provisions of Section 83(2) of the Act. When evidence with regard to an alleged corrupt or illegal practice is to be led, the petitioner would be allowed to lead evidence only with regard to the corrupt or illegal practice in respect of which he has given sufficient particulars as required by Section 83(2). When no such particulars are given the averments would have to be ignored and no evidence could be allowed to be led. Thus when sufficient particular about none of the corrupt or illegal practice has been given there remains nothing with respect to which the petitioner can go to trial and the Tribunal would have no option but to dismiss the petition.

18. So far as the costs of and incidental to the petition are concerned, the Tribunal is of opinion that the petitioner should bear his own costs and pay Rs. 100 as the costs of respondent No. 1 Respondents Nos. 2, 3, and 4 should bear their own costs.

ORDER

The petition is dismissed. The petitioner do bear his own costs of and incidental to the petition and do pay Rs. 100 to respondent No. 1 as costs of an incidental to the petition. Respondents Nos. 2, 3 and 4 do bear their own costs.

B. C. VAKIL, Chairman, Election Tribunal.

T. P. GHOGALE, Member, Election Tribunal.

A. A. ADARKAR, Member, Election Tribunal.

7th October, 1952.

P. S. SUBRAMANIAN,
Officer on Special Duty.